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**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 11th day of September, two thousand and six.

PRESENT:

HON. BARRINGTON D. PARKER,
HON. REENA RAGGI,
HON. RICHARD C. WESLEY,
Circuit Judges.

Elhadj Ibrahima Diallo, _____

Petitioner,

-v.-

No. 05-5253-ag
NAC

Alberto R. Gonzales,

Respondent.

FOR PETITIONER: Thomas V. Massucci, New York, New York.

FOR RESPONDENT: R. Alexander Acosta, United States Attorney for the Southern District of Florida, Anne R. Schultz and Kathleen M. Salyer, Assistant United States Attorneys, Miami, Florida.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of

1 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED that the
2 petition for review is DENIED.

3 Elhadj Ibrahima Diallo petitions for review of the BIA’s September 2005 decision in
4 which the BIA affirmed Immigration Judge (“IJ”) Brigitte Laforest’s order denying Diallo’s
5 applications for asylum, withholding of removal, and relief under the Convention Against
6 Torture Act (“CAT”) and ordering him removed. We presume the parties’ familiarity with the
7 underlying facts, the procedural history, and the scope of the issues presented on appeal.

8 When the BIA summarily affirms the decision of the IJ without issuing an opinion, this
9 Court reviews the IJ’s decision as the final agency determination. *See* 8 C.F.R. § 1003.1(e)(4);
10 *Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005); *Yu Sheng Zhang v. U.S. Dep’t of Justice*, 362 F.3d
11 155, 156 (2d Cir. 2004). Like other factual findings, the Court reviews adverse credibility
12 determinations under the substantial evidence standard, treating them as “conclusive unless any
13 reasonable adjudicator would be compelled to conclude to the contrary.” 8 U.S.C. §
14 1252(b)(4)(B); *see Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004).

15 The IJ listed a number of inconsistencies in Diallo’s testimony. The most significant and
16 damaging discrepancy was Diallo’s testimony about the birth of his son, Yero. Diallo’s
17 testimony - that he was detained from January 1999 until March 2001 - contradicts information
18 provided in his application stating that his son, Yero, was born in June 2000. When questioned
19 by counsel about this major discrepancy, Diallo appeared to go back and forth, testifying in a
20 confusing manner. At first, Diallo stated that he was in fact the biological father of Yero. Then,
21 when counsel asked how it was possible for Diallo to have a child while he was in detention,
22 Diallo stated that he could not say if Yero was his child or not. Finally, the IJ observed that
23 Diallo appeared to become flustered as he tried to further explain the discrepancy stating that

1 “[a]round that time if you are with your wife for a long period of time, even if your wife had a
2 baby, you cannot say that it’s not your baby. Because sometimes giving birth to a baby can be
3 spread apart, sometime it can take four years before your wife can, becomes pregnant. It can take
4 five years.”

5 Moreover, the IJ found that, where Diallo testified he was arrested in January 1999 and
6 released around March 2001, he stated in his application that he was arrested in March 1999 and
7 released in February 2001. The IJ reasonably discounted Diallo’s explanation for this
8 inconsistency. Not only did Diallo testify inconsistently with his application with respect to this
9 time in detention, he proffered internally inconsistent testimony as well - changing his original
10 claim that he was detained for a year and few months to later state that he was detained from
11 January 1999 to March 2001.

12 This Court gives particular deference to credibility determinations that are based on the
13 adjudicator’s observation of the applicant’s demeanor, in recognition of the fact that the IJ’s
14 ability to observe the witness’s demeanor places her in the best position to evaluate whether
15 apparent problems in the witness’s testimony suggest a lack of credibility or, rather, can be
16 attributed to other causes. *Zhou Yun Zhang*, 386 F.3d at 73. The IJ’s characterization of the
17 record with respect to inconsistent testimony is accurate. The IJ cited numerous specific,
18 pertinent reasons to doubt Diallo’s testimony as to critical parts of his story. Furthermore, the IJ
19 reasonably considered and rejected Diallo’s explanations.

20 In finding Diallo incredible, the IJ likewise relied on inconsistencies between
21 his testimony and certain corroborating evidence, *i.e.*, the RPG membership card and the letter
22 from Lamarinah. As the IJ first discovered, Diallo’s RPG membership card, issued in 2000, was
23 inconsistent with Diallo’s testimony that he had been a RPG member since 1992. The IJ also

1 found it contradictory to Diallo's claim that he was incarcerated during the year 2000. When
2 confronted with the inconsistencies surrounding Diallo's RPG membership card, Diallo had no
3 explanation as to why he was only issued a card in 2000, even though he has been a member of
4 the RPG since 1992 and that membership cards are issued every year. Diallo was confronted
5 with the inconsistency and the IJ addressed his explanation in her decision, and the IJ reasonably
6 relied on it in reaching her adverse credibility determination.

7 While these various inconsistencies, standing alone, may have been insufficient to
8 support an adverse credibility determination, the combination adequately supports the IJ's
9 determination.

10 Because Diallo failed to argue his withholding of removal and CAT claims before the
11 BIA, he failed to exhaust his remedies with respect to these claims and this Court lacks
12 jurisdiction to review them. *See* 8 U.S.C. § 1252(d)(1); *see also Foster v. INS*, 376 F.3d 75, 77
13 (2d Cir. 2004).

14 For the foregoing reasons, the petition for review is DENIED. Having completed our
15 review, any stay of removal that the Court previously granted in this petition is VACATED, and
16 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending
17 request for oral argument in this petition is DENIED in accordance with Federal Rule of
18 Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

19 FOR THE COURT:
20 Roseann B. MacKechnie, Clerk
21 By: _____